

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEAN-MARIE BOUCICAUT;
MARIE THELEMARQUE; and
TAX REVIEW CORPORATION,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION, RECOVERY OF
ERRONEOUS TAX REFUNDS, AND OTHER RELIEF**

The plaintiff, the United States of America, complains and alleges against the defendants, Jean-Marie Boucicaut, Marie Thelemarque, and Tax Review Corporation, as follows:

1. This is a civil action brought by the United States pursuant to sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("I.R.C.") to restrain and enjoin the defendants, Jean-Marie Boucicaut, Marie Thelemarque, and the Tax Review Corporation, and all those in active concert or participation with them from:

- (a) Acting as federal tax return preparers or requesting, assisting in or directing the preparation and/or filing of federal tax returns for any person or entity other than themselves, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- (b) Understating customers' tax liabilities as penalized by I.R.C. § 6694;

- (c) Engaging in activity subject to penalty under I.R.C. § 6695, including failing to furnish tax returns to customers, failing to sign returns as the paid tax-return preparer, failing to list a tax identification number, and endorsing or otherwise negotiating tax refund checks;
- (d) Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know would result in an understatement of another person's tax liability;
- (e) Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that interferes with the administration and enforcement of the internal revenue laws; and
- (f) Obtaining, using, or retaining any other person's Social Security number or other federal tax identification number or federal tax return information in any way for any purpose without that person's express written consent.

2. This action is also brought pursuant to I.R.C. § 7405(b) to recover amounts that were erroneously received and deposited by defendants. The United States also seeks a judgment for the interest which has accrued and continues to accrue on the erroneously refunded amounts as permitted by I.R.C. § 7405(c).

Jurisdiction

3. This action has been requested a delegate of the Secretary of the Treasury and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of I.R.C. §§ 7402, 7405, 7407, and 7408.

4. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and I.R.C. §§ 7402(a), 7405, 7407, and 7408.

Defendants

5. Defendants Jean-Marie Boucicaut and Marie Thelemarque reside in Orlando, Florida.
6. Jean-Marie Boucicaut and Marie Thelemarque were formerly married but are not currently married.
7. Jean-Marie Boucicaut has also identified himself as Jean-Marie Boursiquot.
8. Jean-Marie Boucicaut emigrated from Haiti in 1980, and is now a citizen of the United States.
9. Marie Thelemarque also emigrated from Haiti, and also is now a citizen of the United States.
10. Jean-Marie Boucicaut incorporated defendant Tax Review Corporation with the Florida Department of State in June 2002 and serves as its registered agent, president, vice-president, secretary, and treasurer. He is the sole shareholder of Tax Review Corporation.
11. Jean-Marie Boucicaut incorporated Leadership Network Corporation with the Florida Department of State and served as its registered agent and was its sole shareholder. The state administratively dissolved the corporation on October 1, 2004.
12. Jean-Marie Boucicaut and Marie Thelemarque operate their return-preparation business through the Tax Review Corporation and previously operated their return-preparation business through the Leadership Network Corporation.

Venue

13. Defendants maintain an office for their return-preparation activities at 800 Oakland Park Blvd., Suite 304, Fort Lauderdale, Florida, within this judicial district. From this office, defendants provide services to their customers.
14. Defendants have recently opened a second office in Orlando.

15. Nearly all of defendants' customers involved in the activities alleged below reside in Broward and Miami-Dade Counties within this judicial district.

16. Defendants and their agents solicit customers by visiting homes in selected neighborhoods located in Broward and Miami-Dade Counties within this judicial district and through targeted mail advertising in these neighborhoods.

17. All of defendants' agents involved in the activities alleged below that received referral fees or commissions from defendants reside in Broward and Miami-Dade Counties within this judicial district.

18. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) and (c).

Defendants' activities

19. Defendants Jean-Marie Boucicaut and Marie Thelemarque, operating through the Tax Review Corporation and formerly through the Leadership Network Corporation, provide tax-preparation services to customers in South Florida to prepare individual federal income tax returns.

20. Defendants prepare original (non-amending) federal income tax returns. They charge an up-front fee that must be paid before the defendants will deliver the returns to their customers.

21. Defendants also prepare amended federal income tax returns. They offer to review customers' returns that were not prepared by the defendants and that have already been filed with the IRS to determine whether the tax reported was overstated and a refund can be obtained.

22. To recruit new customers for their amended-return practice, defendants have sent a direct mailing that informs prospective customers that if they own a home, had work-related expenses, or had

education expenses, they may be entitled to more money from the Internal Revenue Service. Also, agents paid by defendants have visited customers' homes to recruit potential customers.

23. Defendants target their amended-return practice at immigrants from Haiti and focus primarily on Haitian-immigrant communities in Broward and Miami-Dade counties.

24. As part of their amended-return practice, defendants request that potential customers provide them with federal income tax returns from previous years. The defendants tell potential customers that they need the returns to determine whether the customers qualify for the defendants' services.

25. After obtaining previously filed tax returns from these customers, defendants proceed to prepare and file various documents in the customers' names with the IRS. Defendants have, without these customers' authorization or knowledge, filed forms to change the customers' address of record with the IRS to a post office box rented by defendants. Defendants also, without these customers' authorization or knowledge, have prepared and filed amended federal income tax returns for the customers that decrease the reported total tax and request corresponding income tax refunds. Defendants or their agents sign these fraudulent amended tax returns as the taxpayer, without the customers' authorization or knowledge. Defendants list a post office box rented by them as the address on the customers' amended returns.

26. By filing the forms and documents described in the previous paragraph without their customers' knowledge or consent, and then absconding with the customers tax refunds the defendants perpetrate identity theft on customers from whom the defendants have obtained social security numbers and other sensitive tax information under false pretenses.

27. The amended returns that defendants prepare using their customers' names seek refunds of income taxes by fraudulently claiming such things as Hope Education Credits, additional Form 1040 Schedule A itemized deductions such as additional charitable contributions or work-related expenses, and additional Form 1040 Schedule C commuting expenses.

28. Defendants do not ask their customers whether they had incurred the types of expenses required to be eligible for the credits and deductions mentioned in the previous paragraph. Their customers typically did not incur these types of expenses and, thus, were not, in fact, eligible for the credits and deductions claimed by defendants on the amended tax returns.

29. Claiming credits and deductions for which the customers are not eligible understates taxable income and, thus, understates tax liability.

30. Defendants forge their customers' signatures on the amended tax returns they file with the IRS.

31. Defendants fail to inform the customers that amended returns have been filed and fail to provide the customers with copies of the filed returns.

32. Defendants fail to sign these amended returns as a paid preparer and fail to provide their tax identification numbers on the return.

33. The understatements of tax liability on the amended returns has led to the erroneous issuance of tax refund checks. Defendants have received these tax refund checks at a post office box rented by defendants and have deposited the checks in the defendants' business checking account after falsely endorsing each check as the customer. The IRS has thus far discovered 593 erroneous tax refund checks totaling \$772,249 deposited by defendants in such a manner.

34. After receiving and depositing tax refund checks for their customers defendants then write checks to some, but not all, of these customers. The checks that defendants do write are for the amount of the tax refund obtained less amounts the defendants withhold as fees. Defendants send refunds to less than half of the customers for whom the defendants have obtained improper tax refunds, with the defendants keeping all of the fraudulently obtained tax refunds obtained for the other customers.

35. Defendants know that their conduct is illegal.

36. Boucicaut has been preparing federal income tax returns for customers since at least 1995. He is therefore knowledgeable about tax law.

37. Boucicaut told the IRS in October 2003, after learning of the IRS's investigation of his misconduct, that defendants would cease preparing and filing amended returns claiming the fabricated credits and deductions discussed above. Defendants, however, have since filed at least 100 fraudulent amended returns for customers returns claiming fabricated credits and deductions.

38. Defendants continue to prepare and file amended tax returns that claim false credits and deductions.

39. Defendants continue to use post office boxes to receive correspondence and refund checks from the IRS and continue to forge endorsements and deposit these refunds checks into their business account.

Harm to the public

40. Defendants' preparation of false and fraudulent tax returns, to the extent that they remit to their customers a portion of the refund check, results in customers receiving substantial tax refunds to

which they are not legally entitled. To the extent defendants do not remit to their customers a portion of the refund checks, defendants' preparation of false and fraudulent tax returns results in the defendants unlawfully receiving substantial tax refunds.

41. The United States is harmed because the IRS has issued at least 593 refund checks based on fraudulent returns filed by defendants. The total of these refund checks is \$772,249 for an average refund exceeding \$1,300. The IRS estimates that defendants have submitted an additional 2,800 fraudulent returns claiming refunds exceeding \$3.3 million that the IRS detected before issuing refunds.

42. The United States is also harmed because the IRS is forced to devote substantial resources to identifying defendants' customers and recovering any erroneous refunds that are issued. Each return discovered requires further effort by the IRS to communicate with customers and to determine their correct tax liability. Given the IRS's limited resources, identifying and recovering all revenues lost from defendants' preparation of false and fraudulent returns may be impossible.

43. In addition to the harm caused by their preparation of tax returns that understate their customers' tax liabilities, defendants' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

44. Defendants' customers are harmed because defendants retain all or part of tax refunds issued to them by the IRS. Their customers are potentially liable to the IRS to repay the erroneous refunds as well as interest and penalties.

Count I
Injunction under I.R.C. § 7407 for violation of I.R.C. §§ 6694 and 6695

45. The United States incorporates by reference the allegations in paragraphs 1 through 44.

46. I.R.C. § 7407 authorizes a district court to enjoin an income tax preparer from:

- (a) engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position);
- (b) engaging in conduct subject to penalty under I.R.C. § 6695 (which penalizes a tax return preparer who fails to furnish a copy of the return to the customer, who fails to sign the return, who fails to furnish an identifying number, or who endorses or negotiates customer refund checks); or
- (c) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

47. The IRS estimates that defendants have prepared more than 2,800 federal income tax returns that included false or fraudulent credits and deductions. In so doing, defendants understated their customers' federal tax liabilities and asserted positions which they knew or reasonably should have known were unrealistic under I.R.C. § 6694.

48. Defendants have failed to deliver copies of filed tax returns to their customers in violation of I.R.C. § 6107(a). These failures subject them to penalty under I.R.C. § 6695(a).

49. Defendants have failed to sign their names to the tax returns that they prepared. These failures subject them to penalty under I.R.C. § 6695(b).

50. Defendants have failed to list an identifying number as a return preparer on their customers' returns in violation of I.R.C. § 6109(a)(4). These failures subject them to penalty under I.R.C. § 6695(c).

51. Defendants have illegally endorsed customer tax refunds checks and illegally deposited the proceeds into their bank accounts. These actions subject them to penalty under I.R.C. § 6695(f).

52. Defendants' actions, as described above, fall within I.R.C. § 7407(b)(1)(A) and (D), and are, thus, subject to being enjoined under I.R.C. § 7407.

53. If they are not enjoined, defendants are likely to continue to prepare and file tax returns that include false or fraudulent credits and deductions and that fail to list their names as preparer and list an identifying number. If they are not enjoined, defendants will likely continue to fail to provide copies of returns to their customers. If they are not enjoined, defendants are likely to forge endorsements and deposit customer refund checks into their bank accounts.

Count II
Injunction under I.R.C. § 7408 for violation of I.R.C. § 6701

54. The United States incorporates by reference the allegations in paragraphs 1 through 53.

55. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under I.R.C. § 6701 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

56. I.R.C. § 6701 imposes a penalty on any person who prepares or assists in the preparation of a return, affidavit, or other document that the person knows or has reason to believe will be used in connection with any material matter arising under the internal revenue laws, and that the person knows would (if so used) result in an understatement of tax liability.

57. Defendants prepare returns and other documents that they file for their customers. They know or have reason to believe that the returns they prepare will be used in connection with material matters arising under the internal revenue laws.

58. Defendants know that the returns and other documents they prepare include false credits or deductions that result in understatements of their customers' tax liabilities.

59. If they are not enjoined, defendants are likely to continue to prepare returns understating their customers' tax liabilities.

Count III
Injunction under I.R.C. § 7402(a) for unlawful
interference with the enforcement of the internal revenue laws

60. The United States incorporates by reference the allegations of paragraphs 1 through 59.

61. I.R.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

62. Defendants, through their actions as described above, engage in conduct that substantially interferes with the enforcement of the internal revenue laws.

63. The federal income tax returns that defendants prepare for their customers improperly and illegally understate their customers' federal income tax liabilities.

64. If defendants are not enjoined from engaging in fraudulent and deceptive conduct, such as preparing false or fraudulent tax returns, the United States will suffer irreparable injury from the losses the defendants are causing the Federal Treasury.

65. While the United States will suffer irreparable injury if defendants are not enjoined, defendants will not be harmed by being compelled to obey the law.

66. The public interest would be advanced by enjoining defendants because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm the conduct is causing to the United States Treasury.

67. If defendants are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws.

Count IV
Recovery of refunds erroneously received and deposited by defendants

68. The United States incorporates by reference the allegations of paragraphs 1 through 67.

69. Section 7405(b) of the I.R.C. authorizes the United States to seek recovery of taxes erroneously refunded. Section 7405(c) permits a court to enter judgment for interest which has accrued and continues to accrue on the refunded amounts.

70. Defendants have submitted amended income tax returns that have requested the IRS to issue refund checks.

71. In response to these amended income tax returns, the IRS has issued approximately 590 refund checks that total around \$770,000 to defendants' customers.

72. These refund checks were intercepted by defendants. Defendants forged endorsements on the checks and deposited the checks in their bank accounts.

73. Defendants were not the intended recipients of the refund checks.

74. Defendants induced the IRS to issue the refund checks by fraud. They did this by submitting false and fraudulent amended tax returns on which they forged the taxpayers' signatures. These returns requested refunds from the IRS and requested that the IRS mail the refund checks to their address. The IRS issued refunds based on these returns.

75. Defendants induced the IRS to issue the refund checks by misrepresentation of material facts. Defendants prepared and filed amended income tax returns that overstated amounts spent by their customers on higher education, charity, and business expenses. These overstatements caused the returns to understate tax liability and, thus, caused the issuance of tax refunds. Defendants knew that

their statements were misrepresentations because they did not interview customers or obtain customer records and thus fabricated the information that the defendants put on customers' returns in order to obtain tax refunds.

WHEREFORE, the plaintiff, the United States of America, respectfully prays as follows:

A. That the Court find that Jean-Marie Boucicaut, Marie Thelemarque, and the Tax Review Corporation have continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695 and have continually and repeatedly engaged in other fraudulent or deceptive conduct substantially interfering with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Jean-Marie Boucicaut, Marie Thelemarque, and the Tax Review Corporation have engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Jean-Marie Boucicaut, Marie Thelemarque, and the Tax Review Corporation have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Jean-Marie Boucicaut, Marie Thelemarque, and the Tax Review Corporation, and all those in active concert or participation with them from:

- (1) Acting as federal tax return preparers or requesting, assisting in or directing the preparation and/or filing of federal tax returns for any person or entity other than themselves, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- (2) Understating customers' tax liabilities as penalized by I.R.C. § 6694;
- (3) Engaging in activity subject to penalty under I.R.C. § 6695, including failing to furnish tax returns to customers, failing to sign returns as the paid tax-return preparer, failing to list a tax identification number, and endorsing or otherwise negotiating tax refund checks;
- (4) Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know would result in an understatement of another person's tax liability;
- (5) Engaging in any other conduct subject to any penalty under the Internal Revenue Code or that interferes with the administration and enforcement of the internal revenue laws; and
- (6) Obtaining, using, or retaining any other person's Social Security number or other federal tax identification number or federal tax return information in any way for any purpose without that person's express written consent.

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring the defendants within 15 days at their own expense to contact by United States Mail and, if an e-mail address is known, by e-mail, all persons for whom they or Leadership Network Corporation prepared a federal tax return to inform these persons of the Court's findings concerning the falsity of the defendants' filings with the IRS, and to enclose a copy of the permanent injunction against them. The notice should also be required to include, for each person, a list of all tax returns and documents the defendants prepared and filed purportedly on behalf of that person and the date and amount and tax year of all tax refunds obtained, and must include copies of all documents submitted to the IRS purportedly on behalf of those persons. The defendants should be required within 20 days to submit, under oath, a certification that they have complied with the notification requirements.

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring the defendants to produce to counsel for the United States within 15 days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom they or Leadership Network Corporation prepared federal tax returns, forms, or claims for refund since January 1, 2002, and also provide copies of all such forms or claims;

G. That the Court determine that the defendants are indebted to the United States for the erroneous refund of federal income taxes, and that the Court enter judgment against defendants for the amount of these refunds less any amounts already recaptured by the federal government, plus interest allowable by law;

H. That the Court retain jurisdiction over the defendants and this action for the purpose of enforcing any permanent injunction entered against defendants;

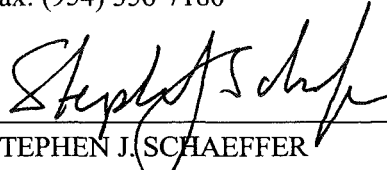
I. That the United States be entitled to conduct discovery for the purpose of monitoring defendants' compliance with the terms of any permanent injunction entered against them; and

J. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED this 12th day of April 2005.

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